

Attachment 1

Public Parking Easement

**First American Title Company**

Escrow No.: 274511

8) Recording Requested by:

*Sunnyvale City Attorney*

When Recorded Mail To:

City Attorney's Office  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94086

WE HEREBY CERTIFY THIS TO BE A TRUE AND  
CORRECT COPY OF THE ORIGINAL RECORDED

ON: 10/1/07 INSTRUMENT # 19602166

COUNTY OF: Santa Clara

FIRST AMERICAN TITLE COMPANY  
BY: [Signature]

DOCUMENT WILL BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE

No fee for recording per Government Code §27383

[Space Above for Recorder's Use]

### **EASEMENT AGREEMENT**

[Public Access & Parking]

by and between

**SUNNYVALE REDEVELOPMENT AGENCY**

A Public Body Corporate and Politic

and

**CITY OF SUNNYVALE**

A Charter City

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is entered into as of September 28, 2007, by and between the Sunnyvale Redevelopment Agency, a public body, corporate and politic (the "Agency" ) and the City of Sunnyvale, a charter city (the "City") with reference to the following facts:

### RECITALS

A. The Agency entered into that certain Amended and Restated Owner Participation and Disposition and Development Agreement to be recorded in the Official Records of Santa Clara County (the "ARDDOPA") for the disposition and development of certain real property located in the City of Sunnyvale (the "Property").

B. Under the terms of the ARDDOPA, the Agency shall enter into a ground lease (the "Public Parking Ground Lease") with Downtown Sunnyvale Mixed Use, LLC (the "Developer") under which the Agency shall lease to Developer a portion of the Property more particularly described in the attached Exhibit A (the "Parking Parcel").

C. Pursuant to the ARDDOPA, the Developer shall construct and operate a public parking facility (the "Improvements") on the Parking Parcel.

D. The Agency and the City desire to enter into this Easement Agreement to provide for easements in favor of the City for access and parking purposes on the Parking Parcel to ensure that the Parking Parcel is available for public parking purposes throughout the term of the Public Parking Ground Lease.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Agency and the City (the "Parties") agree as follows:

Section 1. Parking Parcels Subject to Easement. The Agency owns in fee the Parking Parcel which shall be subject to this Easement Agreement.

Section 2. Grant of Easements.

(a) For valuable consideration hereby acknowledged, the Agency hereby grants to the City for the use and benefit of the general public, a nonexclusive irrevocable easement with a right of entry to use the Parking Parcel for pedestrian and vehicular travel, ingress and egress, and vehicular parking (the "Easement"). This Easement shall burden the Parking Parcel and the interests of the Agency, its successors and assigns and tenants thereof.

(b) Notwithstanding Section 2 (a), the rights under this Easement shall be subject to such reasonable rules and regulations for use of the facilities established pursuant to the Public Parking Ground Lease, which rules and regulations, by way of example, may include time limits on parking, charges for parking or parking validation systems.

Section 3. Benefit and Burden, Run with the Land. It is the intent of the Agency and the City that the Easement granted by the Agency pursuant to Section 2 above shall burden the Parking Parcel and be binding on the Agency and its successors and assigns, for the benefit of the general public, the City and its successors and assigns.

Section 4. Default and Remedies. In the event of any breach of this Agreement by a party, the nonbreaching party may give the breaching party written notice describing the breach and sixty (60) days in which to cure. Should the breaching party fail to cure such breach within the sixty (60) day cure period, the nonbreaching party may enforce all the remedies available to them at law or in equity.

Section 5. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

Section 6. Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

Section 7. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

Section 8. Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

Section 9. Joint and Several Obligations. In the event any party hereto is composed of more than one person or entity, the obligations of such party shall be joint and several.

Section 10. Recordation. This Agreement shall be recorded in the office of the recorder of the County of Santa Clara.

Section 11. Notices, Demands and Communications. Formal notices, demands, and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, secured personally, or dispatched by certified mail, return receipt requested, or by facsimile transmission or reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the parties as follows:

**"AGENCY"**

The Sunnyvale Redevelopment Agency  
Attn: Executive Director  
456 West Olive Avenue  
Sunnyvale, California 94086  
Telephone: (408) 730-7480  
Facsimile: (408) 730-7699

**"CITY"**

City of Sunnyvale  
Attn: City Manager  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707  
Telephone: (408) 730-7480  
Facsimile: (408) 730-7699

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this section. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 12. No Discrimination. No party shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its property, or a part thereof, to any person on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin, familial status, handicap, or disability.

Section 13. Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, to collect damages as a result of any breach of this Agreement, or arising out of this Agreement or the rights and obligations of the Parties hereunder the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees, expenses, and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement).

Section 14. Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

"CITY"

CITY OF SUNNYVALE


By   
Amy Chan, City Manager

Approved as to form:  
  
CITY ATTORNEY

"AGENCY"

SUNNYVALE REDEVELOPMENT AGENCY

By   
Amy Chan, Executive Director

Approved as to form:  
  
CITY ATTORNEY  
Agency Counsel

ACKNOWLEDGMENT

STATE OF CALIFORNIA     )  
                                      )  
COUNTY OF SANTA CLARA    )

On Sept. 28, 2007, before me, Jeri Stanfield,  
Notary Public, personally appeared AMY CHAN, personally known to me (or proved to me on  
the basis of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that she executed the same in her authorized capacity, and  
that by her signature on the instrument, the person, or the entity upon behalf of which the person  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



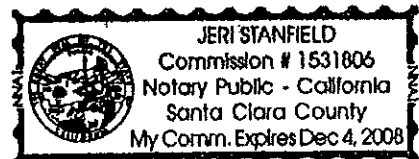
ACKNOWLEDGMENT

STATE OF CALIFORNIA     )  
                                      )  
COUNTY OF SANTA CLARA    )

On Sept. 28, 2007, before me, Jeri Stanfield,  
Notary Public, personally appeared AMY CHAN, personally known to me (or proved to me on  
the basis of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that she executed the same in her authorized capacity, and  
that by her signature on the instrument, the person, or the entity upon behalf of which the person  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



## **EXHIBIT A**

**Legal Description of Parking Parcel – TO INCLUDE ALL Agency parcels with parking structures, except the Penney's parking parcel**



September 26, 2007  
BKF No. 20046002-32

Legal Descriptions  
of  
"Parking Parcels"  
Tract No. 9925  
(Sunnyvale Town Center)

Lot 3, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 3, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 4, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 4, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 1 Block 6, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 6, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

This description was prepared by me or under my direction.

For: BKF Engineers

*M B Parissenti*

Martin B. Parissenti, P.E., No. 630747

License expires 3-30-2008

9/26-07

Dated





Attachment 2

Public Parking Ground Lease

**RECORDING REQUESTED BY:  
WHEN RECORDED, MAIL TO:**

L. Gerald Hunt, as court-appointed receiver in  
*Wachovia Bank v. Downtown Sunnyvale  
Residential, et al.*  
P.O. Box 827  
Danville, California 94526

**FIRST AMENDMENT TO  
PUBLIC PARKING GROUND LEASE**

THIS FIRST AMENDMENT TO PUBLIC PARKING GROUND LEASE (this "**First Amendment**") is entered into as of the \_\_\_\_ day of August, 2010, by and between the Sunnyvale Redevelopment Agency, a public body, corporate and politic (the "**Landlord**"), and L. Gerald Hunt, as Court-Appointed Receiver in *Wachovia Bank v. Downtown Sunnyvale Residential, et al.*, Santa Clara Superior Court Case No. 109-CV-153447 ("**Receiver**") for the property of Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("**DSMU**") (each a "**Party**" and collectively referred to herein as the "**Parties**").

**RECITALS**

This First Amendment is based upon the following Recitals:

A. Agency and DSMU entered into that certain Amended and Restated Disposition and Development and Owner Participation Agreement dated February 6, 2007, as amended (the "**ARDDOPA**"), which relates to the redevelopment of certain property located in City of Sunnyvale, California and commonly known as Sunnyvale Town Center (the "**Redevelopment**");

B. Agency and DSMU entered into that certain Public Parking Ground Lease dated September 28, 2007, and recorded October 1, 2007, as Document No. 19602167, Official Records of Santa Clara County, California (the "**Lease**");

C. DSMU commenced construction of portions of the Redevelopment pursuant to the ARDDOPA and the Lease (and other agreements associated with the Redevelopment). However, with respect to certain agreements relating to the financing of the Redevelopment, foreclosure proceedings were instituted by Wachovia Bank, National Association as Administrative Agent ("**Lender**"), pursuant to Case No. 109CV153447, Superior Court of the State of California, County of Santa Clara (the "**Receivership Proceeding**");

D. Receiver was appointed receiver for property owned or leased by DSMU by the Superior Court of California, County of Santa Clara pursuant to an Order appointing the Receiver entered as of October 5, 2009 and has authority to enter into this First Amendment;

E. Concurrently herewith, Agency and Receiver are entering into an agreement amending and restating the ARDDOPA in its entirety; and

F. The Parties to this First Amendment desire to amend the Lease as more fully set forth below.

**NOW, THEREFORE**, for good and valuable consideration, including the mutual promises and agreements herein contained, the Parties agree as follows:

1. Recitals. The Recitals as set forth above are hereby incorporated into this First Amendment.

2. Defined Terms. Except as otherwise defined or amended herein, capitalized terms used in this First Amendment shall have the meaning ascribed to them in the Lease.

3. Tenant Notice Address. Section (f) of Article 1 of the Lease is hereby amended to delete the address set forth therein and to replace such address with the following:

L. Gerald Hunt, Receiver  
c/o Quattro Realty Group, LLC  
390 Railroad Avenue, Suite 200  
Danville, CA 94526  
Tel: (925) 314-2712  
Fax: (925) 314-2701

4. ARDDOPA. Section 2.1(b) of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

(b) "2010 ADDOPA" means the 2010 Amended Disposition and Development and Owner Participation Agreement by and between Landlord and Tenant dated August \_\_, 2010, as may be amended, supplemented or restated from time to time.

All references in the Lease to the ARDDOPA shall be deemed to refer to the 2010 ADDOPA as defined above. All references to the "Center Property (as defined in the ARDDOPA)" are hereby amended to refer to the "Sunnyvale Town Center (as defined in the 2010 ADDOPA)."

5. OREA. Section 2.1(k) of the Lease is hereby deleted in its entirety and the following is inserted in place thereof:

(k) "OREA" means the Operation and Reciprocal Easement Agreement by and among Macy's Department Stores, Inc., an Ohio corporation (now

known as Macy's West Stores, Inc.), Target Corporation, a Minnesota corporation, Tenant and Landlord, dated October 28, 2008, and recorded October 30, 2008, as Document No. 20033381, Official Records of Santa Clara County, California, as amended by the First Amendment to Operation and Reciprocal Easement Agreement dated June 15, 2010, and recorded July 6, 2010, as Document No. 20763325, Official Records of Santa Clara County, California, as may be amended, supplemented or restated from time to time.

All references in the Lease to the OREA (including references to the undefined term "New OREA") shall be deemed to refer to the foregoing definition.

6. Property. Section 2.1(l) of the Lease is hereby amended by adding the following sentence to the end of such Section:

The term "Property" (and the term "Public Parking Parcels" as used in Section 6.1(a)) shall not include air space parcels and/or air space condominium lots located or created within the real property described in Exhibit A for all or a part of any underground parking located therein and owned by Tenant.

7. Permitted Use. Section 6.1(a) of the Lease is hereby amended by adding the following sentence to the end of such Section:

Pursuant to the terms of the OREA, Improvements may be constructed below the ground level of the Property and dedicated to the exclusive use of the owners or occupants of those portions of the Sunnyvale Town Center owned or leased for office or residential purposes. Pursuant to the terms of the 2010 ADDOPA, air space parcels and/or air space condominium lots may be created for all or part of the parking constructed below the ground level of the Property.

8. Expense Reimbursement. Section 6.8 of the Lease is hereby amended by adding the following sentences at the end of such Section:

The provisions of this Section shall not apply to charges of any kind whatsoever imposed by any governmental authority on Landlord, Tenant or the uses of the Property as part of a parking management program, transportation control program or other governmental regulation of parking. In addition, Tenant may charge and collect payments and expenses incurred by it under this Lease from the tenants of the Sunnyvale Town Center and/or from the parties to the OREA to the extent provided in the respective leases and OREA.

9. Effective Date. This First Amendment is effective as of May 14, 2010.

10. Ratification. Except as specifically amended above, the terms and provisions of the Lease remain in effect.

11. Authority. Each Party represents and warrants to each other Party that the person signing on behalf of such Party has been duly authorized to enter into this First Amendment.

12. Counterparts. This First Amendment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

13. Limitation on Liability. The Parties agree that the Receiver is executing this First Amendment on behalf of DSMU solely in his capacity as Court-Appointed Receiver in the case of *Wachovia Bank v. Downtown Sunnyvale Residential, et al.*, Santa Clara Superior Court Case Number 109CV153447 and the Parties agree that Section 35 of the Order Appointing Receiver applies to this First Amendment. Section 35 provides as follows:

The Receiver and his related entities (including, but not limited to, the Quattro Realty Group and its managing members Bradley N. Blake, Michael Parker and Bradley Griggs), shall bear no personal liability for any actions or omissions in conformity with the provisions of this Order, and any future orders pertaining to this Receivership.

The Parties agree that the Receiver shall have no personal liability for any claims under this First Amendment, *provided, however*, that nothing herein shall exempt the estate administered by the Receiver pursuant to Receivership Proceeding from any such claim.

*[signature pages follow]*

Attachment 2

**IN WITNESS WHEREOF**, the Parties have caused this First Amendment to be executed as of the date first stated above.

**LANDLORD:**

SUNNYVALE REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Gary Luebbers, Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
David Kahn, Agency Counsel

State of California            )  
County of                        )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_,  
Notary Public (here insert name and title of the officer), personally appeared,  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**RECEIVER**

L. GERALD HUNT, as Court-Appointed Receiver in  
*Wachovia Bank v. Downtown Sunnyvale Residential, et al.*,  
Santa Clara Superior Court Case No. 109 CV 153447

By: \_\_\_\_\_  
Michael Parker  
Authorized Agent for the Receivership Estate

State of California                    )  
County of                                )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_,  
Notary Public (here insert name and title of the officer), personally appeared, Michael Parker, as  
authorized agent for L. Gerald Hunt, a Court-Appointed Receiver in *Wachovia Bank v.*  
*Downtown Sunnyvale Residential, et al.*, who proved to me on the basis of satisfactory evidence  
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**CONSENT AND SUBORDINATION  
TO  
FIRST AMENDMENT TO  
PUBLIC PARKING GROUND LEASE**

This Consent and Subordination is made by WELLS FARGO BANK, N.A., a national banking association, as successor-by-merger to Wachovia Bank, National Association, a national banking association, on behalf of itself and Bank of America, N.A., a national banking association, as lenders ("**Administrative Agent**") with respect to the foregoing First Amendment to Public Parking Ground Lease (the "**First Amendment**") dated as of even date herewith between Sunnyvale Redevelopment Agency, a California public body, corporate politic, and L. Gerald Hunt as court-appointed receiver in *Wachovia Bank v Downtown Sunnyvale Residential, et al* for the property of Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("**DSMU**"). Administrative Agent is the holder of the following security instruments (collectively, and together with any and all other documents and/or instruments evidencing or securing the loan evidenced by said note, the "**Mortgage**") encumbering the Sunnyvale Town Center:

Construction Loan Agreement dated August 29, 2007, which is secured, in part, by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 29, 2007, executed by DSMU, as Trustor, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on August 30, 2007, in the Official Records of Santa Clara County, California as Instrument No. 19570207, as modified by that certain Modification No. 1 to Deed of Trust, dated as of September 28, 2007, by and between DSMU, as Trustor, and Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on October 1, 2007, in the Official Records of Santa Clara County, California as Instrument No. 19602164, as modified by that certain Modification No. 2 to Deed of Trust and Amendment to Absolute Assignment of Lessor's Interest in Leases and Rents ("Modification No. 2"), by and between DSMU, as Trustor, and Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded in the Official Records of Santa Clara County, California as Instrument No. 20033377; Amended and Restated Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated December 31, 2008 executed by DSMU and Downtown Sunnyvale Residential, LLC, as Trustee, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on January 12, 2009, in the Official Records of Santa Clara County, California as Instrument No. 20093448; Absolute Assignment of Lessor's Interest in Leases and Rents dated as of August 29, 2007, executed by DSMU, as Trustor, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on August 30, 2007, in the Official Records of Santa Clara County, California as Instrument No. 19570208, as amended by Modification No. 2; and Amended and Restated Absolute Assignment of Lessor's Interest in Leases and Rents dated as of December 31,



2008, executed by DSMU and Downtown Sunnyvale Residential, LLC, as Trustee, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on January 12, 2009, in the Official Records of Santa Clara County, California as Instrument No. 20093449.

Administrative Agent, on behalf of itself, its successors and assigns, hereby gives all consent necessary under, and hereby subordinates the liens and security interest granted to the First Amendment, with the same force and effect as if the First Amendment had been recorded prior to the making and recording of the Mortgage.

This Consent and Subordination shall be binding upon successors and assigns of Administrative Agent, including the holder at any time of any portion of the indebtedness secured by the Mortgage.

This Consent and Subordination granted herein are expressly limited to the First Amendment and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the Mortgage.

WELLS FARGO BANK, N.A., successor-by-merger to Wachovia Bank, National Association, on behalf of itself and Lenders

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On August \_\_, 2010, before me, \_\_\_\_\_,  
Notary Public (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (seal)

My commission expires \_\_\_\_\_.

**First American Title Company**

**Escrow No.:** 274511

Recording Requested by:

*Sunnyvale City Attorney*

When Recorded Mail To:

City Attorney's Office  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94086

WE HEREBY CERTIFY THIS TO BE A TRUE AND  
CORRECT COPY OF THE ORIGINAL RECORDED

ON: 10/1/07 INSTRUMENT # 19602167

COUNTY OF: Santa Clara

FIRST AMERICAN TITLE COMPANY

BY: [Signature]

DOCUMENT WILL BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE

No fee for recording per Government Code §27383

[Space Above for Recorder's Use]

**PUBLIC PARKING GROUND LEASE**

Sunnyvale Town Center

by and between

**SUNNYVALE REDEVELOPMENT AGENCY**

A public Body Corporate and Politic

and

**DOWNTOWN SUNNYVALE MIXED USE, LLC**

A Delaware Limited Liability Company

By Its Manager

RREEF America REIT III Corp. MM

A Maryland Corporation

**PUBLIC PARKING GROUND LEASE**  
**Sunnyvale Town Center**

This Public Parking Ground Lease (the "Lease") is entered into as of the 28<sup>th</sup> day of September, 2007, by and between the Sunnyvale Redevelopment Agency, a public agency corporate and politic ("Landlord") and Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("Tenant").

In consideration for the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following-described Property, upon the following terms and conditions:

**ARTICLE 1. FUNDAMENTAL LEASE PROVISIONS**

(a) Property: That certain real property located in the City of Sunnyvale, California more particularly described in the attached Exhibit A (the "Property").

(b) Term: Beginning on the Effective Date, and ending at 11:59 P.M. on the day preceding the seventy-fifth (75<sup>th</sup>) anniversary of the Effective Date, unless terminated earlier pursuant to the terms of this Lease; or, if the Agency purchases the Improvements as permitted by the ARDDOPA, this Lease shall terminate upon the completion of that purchase.

If, as of the date five (5) years before the end of the Term, the Center Property (as defined in the ARDDOPA) is still in use as a mixed-use project with a substantial retail element, then either party may request in writing of the other party an extension of the Term for at least ten (10) additional years. If such request is made, the parties shall negotiate in good faith for such an extension.

(c) Rent: Tenant shall pay to Landlord One Dollar (\$1.00) per year for each Lease Year of the Term, so long as the Term is still in effect when the applicable payment is due.

(d) Use. Tenant shall use the Property in accordance with this Lease and the ARDDOPA for the construction and operation of public parking, and for incidental purposes related thereto. Tenant shall not use the Property in such a manner as to violate any applicable law, rule, ordinance or regulation of any governmental body.

(e) Landlord Address:

Executive Director  
Sunnyvale Redevelopment Agency  
456 W. Olive Avenue  
(or P.O. Box 3707)  
Sunnyvale, California 94088  
TEL 408-730-7480  
FAX 408-730-7699

(f) Tenant Address:

Downtown Sunnyvale Mixed Use, LLC  
c/o RREEF America REIT III, Inc.  
Attn: David Wilbur  
101 California Street, 26th Floor  
San Francisco, California 94111  
TEL (415) 262-7716  
FAX (415) 986-6247

Copy to: Sand Hill Property Company  
c/o Peter Pau and Jeff Warmoth  
489 South El Camino Real  
San Mateo, California 94402  
TEL (650) 344-1500  
FAX (650) 344-0652

Section 1.2 Public Entity Tenant Authorization. Entry into this Lease was approved in conjunction with approval of the ARDDOPA (as defined below).

## ARTICLE 2. DEFINITIONS AND EXHIBITS

Section 2.1 Definitions. The capitalized terms set forth in this Section 2.1 shall, for the purposes of this Lease, have the meaning set forth below as follows:

- (a) "City" shall mean the City of Sunnyvale.
- (b) "ARDDOPA" means the Amended and Restated Disposition and Development and Owner Participation Agreement by and between Landlord and Tenant dated as of February 6, 2007.
- (c) "Effective Date" means the date Tenant and Landlord execute this Lease.
- (d) "Hazardous Materials" means any substance, product, waste, or other material of any nature whatsoever:

(1) which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801, et seq. ("HMTA"); the Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. section 2601, et seq. ("TSCA"); the Clean Air Act, 42 U.S.C. section 7401, et seq. ("CAA"); the Clean Water Act, 33 U.S.C. section 1251, et seq. ("CWA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. section 136 et seq. ("FIFRA"); the Atomic Energy Act of 1954 ("AEA") and Low-Level Radioactive Waste Policy Act ("LLRWPA"), 42 U.S.C. section 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. section 10101 et seq. ("NWPA"); the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. section 11001 et seq. ("EPCRA"); the California Hazardous Waste Control Act, Health and Safety Code, Division 20, Chapter 6.5,

section 25100 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code, Division 20, Chapter 6.6, section 25249.5 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health and Safety Code, Division 20, Chapter 6.8, section 25300 et seq.; California Health and Safety Code, Division 20, Chapter 6.95, section 25501, et seq. ("Hazardous Materials Release Response Plans and Inventory"); or the Porter Cologne Water Quality Control Act, California Water Code section 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability (including, but not limited to, response, removal and remediation costs) or standards of conduct or performance concerning any hazardous, extremely hazardous, toxic, dangerous, restricted, or designated waste, substance or material, as now or at any time hereafter may be in effect, or

(2) which is explosive, corrosive, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is regulated by any governmental authority (or by executive or judicial order) as a hazardous material; or

(3) which is or contains oil, gasoline, diesel fuel or other petroleum hydrocarbons; or

(4) which is or contains polychlorinated biphenyls, asbestos, urea formaldehyde foam insulation, radioactive materials; or

(5) which is radon gas.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(e) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.

(f) "Improvements" shall mean the parking structures, related utilities, landscaping and such other improvements that Tenant may construct on the Property in accordance with the ARDDOPA and this Lease.

(g) "Landlord" means the Sunnyvale Redevelopment Agency.

(h) "Lease" means this Public Parking Ground Lease, including the attached Exhibits and all subsequent amendments to this Lease.

(i) "Lease Year" shall mean a period of one calendar year beginning on January 1 and ending on the following December 31, provided, however, that the first Lease Year shall begin on the Effective Date of this Lease and end on the following December 31.

(j) "Lender" means any lender providing financing to the Tenant related to the Property.

(k) "OREA" means the Operation and Reciprocal Easement Agreement by and between Sunnyvale Town Center Properties, a California corporation, Target Corporation, a Minnesota corporation, the Landlord, and Tenant, as dated July 27, 1978, and subsequently amended on September 5, 1980, July 26, 1995, and May 25, 2000, and as may subsequently be revised and superseded by a New OREA subsequent to Closing.

(l) "Property" means the real property located in the City of Sunnyvale, California as more particularly described on the attached Exhibit A.

(m) "Rent" shall mean the payments required by Section 4.1.

(n) "Tenant" means Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company.

(o) "Term" shall mean the term of this Lease as set forth in Article 1 above.

Section 2.2 Exhibits. The following exhibits are attached to and incorporated by reference in this Lease:

Exhibit A: Legal Description of the Property.

### ARTICLE 3. PROPERTY AND TERM

Section 3.1 Lease of Property. The Landlord hereby leases to the Tenant, and the Tenant leases from the Landlord, the Property on and subject to all of the terms and conditions set forth in this Lease.

Section 3.2 Identification of Property. As of the date of this Lease, the Property is that certain Property located in the City of Sunnyvale, California more particularly described in the attached Exhibit A.

Section 3.3 Possession and Condition of Property. The Property shall be delivered to Tenant in accordance with the ARDDOPA and upon the Effective Date. Except as provided otherwise in the ARDDOPA, Landlord is leasing the Property to the Tenant in its "as is" condition and makes no warranty or representation as to the suitability of the Property for the uses to which Tenant intends for the Property. Subject to the terms and conditions of the ARDDOPA, Tenant shall be responsible for and shall bear all costs of demolition, construction, reconstruction, rehabilitation, site preparation, correction of any soils, subsurface or structural conditions on those (including but not limited to removal, remediation, monitoring, or mitigation of any Hazardous Materials) and for otherwise putting parcels in a condition suitable for use, construction, development and operation of parking structures.

Section 3.4 Existing Improvements. Any existing improvements existing on the Property on the Effective Date shall become Tenant's property; provided, however, that Tenant shall demolish, remove, and otherwise dispose of the existing improvements in accordance with

the ARDDOPA. Landlord shall receive no compensation for the improvements other than the performance of Tenant's covenants expressed in this Lease.

#### ARTICLE 4. RENT

Section 4.1 Payments Due. The Tenant shall pay to the Landlord One Dollar (\$1.00) per Lease Year commencing on the Effective Date.

Section 4.2 Utilities. The rent shall not include utilities. Tenant shall pay for all water, gas, light, power, telephone services, sewer services and all other services supplied to the Property, including installation and connection of services.

#### ARTICLE 5. TAXES

Section 5.1 Payment of Taxes. To the extent that Landlord or Tenant is assessed real or personal property taxes, general and special assessments, or other charges against the Property or the Improvements, personal property thereon, a possessory interest therein, Tenant shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment. Tenant acknowledges that pursuant to Health and Safety Code Section 33673, the Property will be assessed for property tax purposes as if privately owned and the Tenant shall be responsible for the payment of all such taxes.

Section 5.2 Prorations. All payments required pursuant to Section 5.1 shall be prorated on a daily basis, assuming a 365-day Lease Year, for the initial Lease Year and for the Lease Year in which the Lease terminates.

Section 5.3 Proof of Compliance. Tenant shall furnish to Landlord at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Tenant may comply with this requirement by retaining a tax service to notify Landlord whether taxes have been paid.

#### ARTICLE 6. USE OF THE PROPERTY AND CONSTRUCTION OF THE IMPROVEMENTS

##### Section 6.1 Use of Property.

(a) Permitted Uses. The Tenant shall use the Property in accordance with the ARDDOPA for construction and operation of the Improvements to provide parking on a non-exclusive basis for members of the general public and incidental purposes related thereto. The Public Parking Parcels are subject to the Public Parking Easement dated September 28, 2007, and recorded in the Official Records of Santa Clara County as Document No. \_\_\_\_\_ pursuant to which the Landlord has granted to the City of Sunnyvale an easement over the Property assuring its use for public parking.

(b) Prohibited Uses.

(i) The Tenant shall not do or permit to be done in, on or about the Property, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Property, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Property.

(ii) Tenant agrees not to knowingly use the Property or permit anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Tenant agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Property.

Section 6.2 Hazardous Materials. Tenant agrees that during the Term of this Lease, Tenant shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Property including, but not limited to, Hazardous Material Laws.

Tenant further agrees that during the Term of this Lease, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Property in violation of any Hazardous Material Laws.

Except as otherwise provided in the ARDDOPA, Tenant shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Property. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials on, under or about the Property results in (a) contamination of the Property, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Property or any other property or injury or death to any persons, then Tenant agrees to respond in accordance with the following. Tenant agrees (a) to notify Landlord immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by Landlord (which approval may be given or withheld in Landlord's reasonable discretion), Tenant shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Landlord and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this section shall survive termination or expiration of this Lease and shall continue thereafter.

Section 6.3 Zoning and Land Use Permits. Tenant shall apply for and receive all permits and approvals required to construct and operate the Improvements pursuant to local,



state, and federal law, including but not limited any approvals required under City zoning ordinances, and the California Environmental Quality Act. If applicable, Tenant shall file applications for such permits and approvals in accordance with the ARDDOPA. Tenant shall bear all costs of such procedures and shall hold Landlord harmless from any claims arising from such procedures.

Section 6.4 Tenant to Construct Improvements. Tenant shall construct the Improvements in accordance with the ARDDOPA.

Section 6.5 Ownership of Improvements. All Improvements constructed on the Property by Tenant as permitted by this Lease and related fixtures shall be owned by Tenant.

Section 6.6 Alterations, Additional Improvements. After completion of construction of the Improvements pursuant to the ARDDOPA, Tenant shall not make or allow to be made any alterations or physical additions of any kind in or to the Property (the "Alterations") without first obtaining the written consent of the Landlord. Such consent shall not be unreasonably withheld provided such Alterations are consistent with the provisions of this Lease. All Alterations shall be made at Tenant's sole cost and expense including the expense of complying with all legal requirements. All such work shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining all appropriate permits and approvals (including a building permit) from authorized governmental agencies. Any additions to or alterations or improvements of said Property shall become at once a part of the Improvements.

Section 6.7 Easements for Construction and Utilities. Landlord grants to Tenant the right to grant public entities or public service corporations, for the purpose of serving only the Property, rights of way or easements on or over the Property for poles or conduits or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services.

Section 6.8 No Charge for Parking. Tenant shall not impose or permit the imposition of any charge for the use of the Property and Improvements without Landlord's consent.

Section 6.9 Policies and Rules. Tenant shall establish and maintain such general policies, rules, and regulations for the repair, management, maintenance, operation and use of the property consistent with the provisions of this Lease and the OREA. Such policies, rules, and regulations must be approved by the Landlord which approval shall not be unreasonably withheld.

Section 6.10 Compliance with Laws. Tenant shall, at Tenant's sole cost and expense, comply with and shall cause any manager and any occupants or subtenants to comply with all federal, state, county, municipal and other government statutes, laws, rules, orders, regulations and ordinances affecting the Property and Improvements, the use thereof, or construction thereon, including those which require the making or any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the government body enacting the same.

## ARTICLE 7. REPAIRS, MAINTENANCE, LIENS

Section 7.1 Maintenance and Repairs by Tenant. The Tenant shall at its own expense, operate, repair and maintain, during the Term, the Property and the Improvements in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same (including but not limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the OREA, all utilities, and all public charges, taxes and assessments of any nature whatsoever), it being understood and agreed that neither Landlord nor the City shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of the Property and the Improvements during the Term. The standards of operation and maintenance of the Property and the Improvements required under this Agreement shall include those operation and maintenance requirements applying to the Property and the Improvements in the OREA and the standards of the City applicable to other public parking facilities. Operator shall at all times ensure that the provisions of the OREA relating to the operation and maintenance of the Property and the Improvements are met to the extent that they apply to the Public Parking Parcels and the Parking Facilities. Once construction of the Improvements is complete, for the remaining years of the Term, Tenant shall provide as many parking spaces as required pursuant to the approvals of the City for the project contemplated by the ARDDOPA and as required by the OREA. In the event Tenant fails to perform the management, maintenance, repair and operation of the Property as provided herein, Landlord shall notify the Tenant in writing of such failure to perform, specifying the respects in which it considers the Tenant's performance to be unsatisfactory. Upon the failure of the Tenant to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Landlord shall collectively or individually have the right to enter the Property and undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner required of the Tenant through this Lease and the OREA. In such event, the Tenant shall reimburse the Landlord for all reasonable sums paid by Landlord or the City under this Section within thirty (30) days after written notice is received from Landlord of amount expended. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Property or Improvements, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

Maintenance requirements and obligations for the Penney's Structure are described in the Penney's Structure Agreement, which shall supplement this Agreement.

Section 7.2 Liens. Tenant shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Tenant and shall keep the Property free and clear of all mechanics' and materialmen's liens in connection therewith. The Landlord shall have the right to post or keep posted on the Property, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Property. If any such lien is filed, the Landlord may, but shall not be required to, upon written notice to Tenant, take such action or pay such amount as may be necessary to remove such lien. Tenant shall reimburse Landlord for all reasonable sums paid by Landlord under this section within thirty (30) days after written notice is received from Landlord of the amount expended.

Section 7.3 Policing. Tenant shall provide adequate security and traffic control for the Parking and Improvements as is necessary to minimize the need of the City to provide routine patrol and traffic control for the Parking and Improvements and is consistent with the OREA. The Tenant and City do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol or traffic control. In providing for security and traffic control, Tenant shall comply with the standards reasonably promulgated by the City's public safety department. Nothing in this section is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety or welfare of the City or any person. The parties shall work with the City's public safety department to provide a means for Tenant enforcement for minor infractions so as to facilitate Tenant's activities under this Section 7.3.

#### ARTICLE 8. INSURANCE, DAMAGE AND DESTRUCTION; CONDEMNATION

Section 8.1 Tenant's Requirements. Tenant shall, at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Landlord, insurance coverage by the following policies of insurance:

- (a) Workers' Compensation Insurance, in accordance with the law;
- (b) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Property or as a result of business or activity at the Property; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles.
- (c) Property Insurance insuring the Property against loss or damage by a standard all risk policy, (excluding flood and earthquake if insurance for those risks is not available at commercially reasonable rates), in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be acceptable to Landlord.
- (d) All policies of liability insurance obtained and maintained by Tenant, in accordance with this section, shall name Landlord and the City as an additional insured and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Landlord and City.
- (e) All insurance provided under this section shall be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.
- (f) Tenant may use insurance proceeds to fulfill its obligations under Section 8.4(a); provided however that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Landlord. (In all other events, Tenant shall pay any insurance proceeds related to the Property to Landlord.)

(g) All insurance provided under this section shall be effected under policies issued by insurers of recognized responsibility licensed or permitted to do business in the State of California.

It is the intent of the parties to maintain throughout the Term insurance coverage appropriate to facilities comparable in use and size to the Improvements, given changes in coverage and types of policies available, market conditions and other factors affecting insurance coverage generally. In this regard, not more frequently than once every five (5) years, either party may request modifications to the insurance coverage required to be maintained by this Section 8.1 to provide for coverage against the same or other insurable hazards that at the time are commonly insured against by prudent operators of similar improvements of comparable size and similarly situated, with due regard given to the height and type of Improvements and their construction, use and occupancy; provided that the cost of any such modifications shall be commercially reasonable with respect to the Property and Improvements.

Section 8.2 Certificates. Certificates of Insurance shall be furnished by Tenant to Landlord and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days prior written notice to Landlord. In the event Tenant does not comply with the requirements of this Article 8, Landlord may, at its option, purchase insurance coverage to protect the Landlord and the Property and Tenant shall reimburse Landlord for all reasonable sums paid by Landlord under this section within thirty (30) days after written notice is received from Landlord of amount expended. Acceptance of insurance certificates by Landlord shall not limit or eliminate the duties or responsibilities of Tenant set forth in this Lease.

Section 8.3 Waiver of Subrogation. Tenant releases Landlord and City from any claims for damage to any person or to the Property and the building and other improvements in or to the Property that are caused by or result from risks insured against under any insurance policies carried by Tenant and in force at the time of any such damage. Tenant shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the Landlord and City in connection with any damage covered by any policy.

Section 8.4 Damage or Destruction.

(a) In the event of damage to or destruction of the Improvements or in the event the Improvements are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion, the repair, replacement or reconstruction of improvements necessary to permit full use and occupancy of the Property and Improvements for the purposes permitted by this Lease. If there is substantial damage or destruction to the Improvements and, under the OREA, neither the Tenant, nor the Landlord, nor the City has an obligation to repair or replace the Improvements following the damage or destruction, the Tenant may, at Tenant's option, cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Landlord of Tenant's election to do so within sixty (60) days after the date of occurrence of such damage

(b) Landlord and Tenant waive the provisions of any statutes that relate to termination of leases when property is destroyed and agree that such event shall be governed by the terms of this Lease.

Section 8.5 Eminent Domain. If all or part of the Property shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Tenant's use of the Property. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to be deemed to give Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for the interruption of or damage to Tenant's business. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Property so made unusable bears to the rented area of the Property immediately prior to the taking. No temporary taking of the Property and/or of Tenant's rights therein or under this Lease shall terminate this Lease or give Tenant any right to any abatement of rent thereunder; any award made to Tenant by reason of any such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein.

## ARTICLE 9. ASSIGNMENT, SUBLETTING, SUBORDINATION AND ESTOPPEL

Section 9.1 Assignment by Tenant. Unless otherwise permitted pursuant to the ARDDOPA, Tenant agrees not to Transfer (as defined below) this Lease or any interest therein, and shall not sublet the Property or any part thereof, without the prior written consent of Landlord, and any attempt to do so without such consent being first had and obtained shall be wholly void. A Transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance or other transfer of any interest in the Lease; (ii) any sublease or occupancy or any portion of the Property by any persons other than Tenant and its employees; and (iii) any changes of ownership in the Tenant, including any transfer of fifty percent or more of the interests in Tenant or the dissolution, merger, consolidation or other reorganization of Tenant.

Notwithstanding the foregoing, Tenant may assign its rights under this Lease to a Lender as security in accordance with Section 9.2.

### Section 9.2 Lender Right to Cure.

(a) Tenant shall have the right at any time and from time to time to subject the Property and Improvements to one or more mortgages required for any reasonable and customary method of financing of the Improvements, provided that the Landlord has approved the financing pursuant to the ARDDOPA, and further provided that:

(i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interests of Landlord and of the City under the Public Parking Easement, except as provided in this Lease.

(ii) Tenant shall give Landlord prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

(b) Landlord shall give any Lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Landlord's notice of default provided pursuant to Article 10 which cure period shall be coterminous with the one provided to Tenant plus such additional time as is reasonably necessary to allow Lender to gain possession of the Property or portions thereof to allow the Lender to cure the failures or conditions.

(c) The documents evidencing Lender's loan to Tenant shall provide that any proceeds from fire or extended coverage insurance shall be used for repair or rebuilding of the leasehold improvements and not to repay part of the outstanding mortgage.

(d) The documents evidencing Lender's loan to Tenant shall contain provisions that all notices of default under the note and mortgage must be sent to Landlord and Tenant and that Landlord shall have the right to cure any default if Tenant fails to do so. Landlord shall have sixty (60) days in which to cure any default if Tenant fails to do so. Neither Landlord's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if Landlord, or Tenant in possession of the Property promptly performs all other provisions of the note and mortgage.

(e) On the recording of Lender's deed of trust or deeds of trust, Tenant shall at Tenant's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by Landlord for a copy of all notices of default and all notices of sale under the deed of trust or deeds of trust as provided under California Law. Inclusion in the body of Lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

(f) Lender shall not be liable to perform Tenant's obligation under this Lease until the Lender acquires Tenant's rights by foreclosure. After acquiring Tenant's rights by foreclosure, Lender shall be liable to perform Tenant's obligations only until Lender assigns or transfers the Lease as permitted in Section 9.1. Lender shall not, however, be required to cure Tenant's defaults occurring before Lender's acquisition of Tenant's rights by foreclosure.

(g) On termination of this Lease by Landlord on Tenant's default, or on Lender's acquisition of the leasehold by foreclosure, Landlord shall enter into a new lease with Lender covering the Property covered by the terminated or foreclosed Lease if Lender (1) gives notice of request within thirty (30) days after termination or foreclosure, (2) pays all costs resulting from default and termination, and (3) remedies all defaults construed as though the Lease had not been terminated. The new lease shall be for the remainder of the term of the terminated or foreclosed Lease, effective at the date of termination or foreclosure, at the rent and on the covenants,

agreement, conditions, provisions restrictions, and limitations contained in the terminated or foreclosed Lease.

(h) No mortgage or deed of trust obtained by or through Tenant shall encumber the Landlord's interest in the Property, this Lease or the Public Parking Easement.

Section 9.3 No Release of Tenant. Consent by Landlord to any assignment or subletting by Tenant shall not relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting, unless the Landlord approves such assignment, and the assignee assumes in writing all obligations of the Tenant under this Lease and the ARDDOPA and Landlord approves the form of the written assignment. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or subletting except as herein provided. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

Section 9.4 Assignment by Landlord. The Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Lease and in the Property and in such event such transferee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the Landlord under this Lease. Tenant shall attorn to the purchaser or successor in interest of the Landlord.

Section 9.5 Estoppel Certificate. Within ten (10) days after request therefore by the Landlord, or if on any sale, assignment or hypothecation by the Landlord of its interest in the Property, or any part thereof, an estoppel certificate shall be required from Tenant, Tenant shall deliver in recordable form, a certificate to any Lender or purchaser, and to the Landlord, certifying (if such be the case) that this Lease is unmodified and in full force and effect; the date of Tenant's most recent payment of rent; that no notice has been received by Tenant of any default by Tenant hereunder which has not been cured, except as to defaults specified in such certificate; and that Tenant has no defenses or offsets outstanding, or stating those claimed by Tenant and any other information reasonably requested. Any such statement may be relied upon by Landlord and by any prospective purchaser or encumbrancer of Property.

Section 9.6 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by the Landlord, its successors or assigns, encumbering the Property, or any part thereof, or in the event of a deed-in-lieu thereof and if so requested, attorn to the purchaser upon such foreclosure or sale or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as the Landlord under this Lease, and Landlord's successor shall be deemed to have assumed all of the Landlord's obligations under this Lease.

## ARTICLE 10. DEFAULT AND TERMINATION OF LEASE

Section 10.1 Events of Default by Tenant. The occurrence of any of the following events shall constitute an "Event of Default" on the part of Tenant, if the default continues for

sixty (60) days after written notice thereof from the Landlord; provided that if the default cannot be cured within sixty (60) days, it shall be an Event of Default if Tenant has not commenced to cure the default within sixty (60) days after written notice or if Tenant fails to diligently continue to cure the default or if such default is not cured within a reasonable time:

(a) Bankruptcy. The filing of a voluntary petition by Tenant, or the filing of an involuntary petition seeking the rehabilitation, liquidation or reorganization of Tenant or other relief under any law relating to bankruptcy, insolvency or other relief of debtors;

(b) Receivership. The appointment of a receiver, trustee, custodian or other officer with similar powers to take possession of a substantial portion of Tenant's assets or of this Lease;

(c) Insolvency or Dissolution. Tenant shall become insolvent or unable to pay its debts as they become due; or any court shall enter a decree or order directing the winding up or liquidation of Tenant or of substantially all of its assets; or Tenant shall take any action toward the dissolution or winding up of its affairs or the cessation or suspension of its business or its use of the Property;

(d) Vacation or Abandonment. Tenant's vacation or abandonment of the Property for more than sixty (60) consecutive days;

(e) Payment. Failure to pay any installment of rent when due, the failure continuing for a period of sixty (60) days;

(f) Performance. Tenant's failure to perform any of its covenants, agreements or obligations hereunder including the failure to operate the Improvements as public parking;

(g) Attachment. Attachment, execution or other judicial seizure of a substantial portion of Tenant's assets or this Lease;

(h) Default under Disposition and Development Agreement. Tenant defaults under the ARDDOPA.

(i) Default under Lender Loan Documents. Tenant defaults under any Lender's Loan Documents.

Section 10.2 Landlord's Remedies. If an Event of Default occurs, and after any notice and cure period has expired, Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate and Tenant shall immediately surrender possession to the Landlord. In addition, Tenant shall owe Landlord all amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or in which the ordinary course of things would be likely to result therefrom.

Section 10.3 Continuation of Lease. Even though Tenant has breached this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to enforce all its rights and remedies under this



Lease, including the right to recover all rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

Section 10.4 Cumulative. Each right and remedy of the Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by the Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 10.5 No Waiver. No failure by the Landlord to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of rent during the continuance of any such breach shall constitute a waiver of any separate breach under this Lease. Efforts by the Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not be construed to be a waiver of Landlord's right to recover damages under this Article 10.

Section 10.6 Landlord Breach. If the Landlord materially breaches this Lease, Tenant shall give the Landlord written notice of such breach, which notice requests that the breach be cured. If the breach is not cured: (i) within sixty (60) days after receipt by the Landlord of the notice of breach or (ii) if by reason of the nature of the breach, it cannot be cured within sixty (60) days, then within a time that would be reasonable if Landlord were to proceed with diligence to remedy the breach, Tenant shall be entitled to any remedy available to it at law or equity.

## ARTICLE 11. MISCELLANEOUS PROVISIONS

Section 11.1 Notices. All notices required to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail return receipt requested, or delivered by personal delivery, or reputable overnight delivery which provides a delivery receipt, to the appropriate addresses set forth in Articles 1(e) and (f) of the Fundamental Lease Provisions, or at such other place or places as either the Landlord or Tenant may, from time to time respectively, designate in a written notice given to the other. Notices shall be deemed sufficiently served on the date of personal delivery or the refusal to accept the mailing thereof, as evidenced by the requested return receipt.

Section 11.2 Conflict of Interest. No member, official or employee of the Tenant shall make any decision relating to the Lease which affects his or her personal interests or the interest of any corporation, company, partnership or association in which he or she is directly or indirectly interested.

Section 11.3 Non-Liability of Officials, Employees and Agents. The liability of Tenant for its obligations under this Lease is limited solely to Tenant's interest in the Property as the same may from time to time be encumbered. No member, official, employee or agent of the Tenant, shall be personally liable to the Tenant, or any successor in interest, in the event of any default or breach by the Tenant or for any amount that may become due to the Landlord or successor or assign on any obligation under the terms of this Lease.

Section 11.4 Successors Bound. This Lease and each of its covenants and conditions shall be binding upon and shall inure to the benefit of both the Landlord and Tenant and their respective heirs, successors and legal representatives and their respective assigns, subject to the provisions hereof. Whenever in this Lease a reference is made to the Landlord, such reference shall be deemed to refer to the person in whom the interest of the Landlord shall be vested, and the Landlord shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Property. Any successor or assignee of Tenant who accepts an assignment or the benefit of this Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions hereof.

Section 11.5 Peaceful Enjoyment. Tenant shall, and may peacefully have, hold and enjoy the Property, provided that Tenant pays the rental and other sums herein recited to be paid by Tenant and performs all of Tenant's covenants and agreements herein contained.

Section 11.6 Time. Time is of the essence of every provision of this Lease.

Section 11.7 Severability. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease, or the application thereof to any person or circumstance, shall remain in full force and effect to the maximum extent possible and shall in no way be affected, impaired or invalidated.

Section 11.8 Applicable Law. This Lease, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 11.9 Holding Over. Should Tenant, or any of its successors in interest, hold over the Property, or any part thereof, after the expiration of the Term of this Lease, unless otherwise agreed to in writing, such holding over shall constitute and be construed as tenancy from month-to-month only, and rent shall be \$100,000 per month.

Section 11.10 Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Property and Improvements thereon to the Landlord, provided, however, that Landlord may elect to require Tenant to remove the Improvements from the Property at the expiration of the Lease. Such election shall be made by written notice given by Landlord to Tenant at least six (6) months prior to the end of the Term. The Landlord may cause any personal property that is not removed from the Property within thirty (30) days after the date of any termination of this Lease to be removed from the Property and stored at Tenant's expense, or, at Landlord's election said personal property thereafter shall belong to Landlord without the payment of any consideration, subject to the rights of any person holding a perfected security

interest therein. Upon the expiration or earlier termination of this Lease, Tenant shall reassign to Landlord all of the rights of Tenant in, to or relating to the Property. Not

Section 11.11 Entry By Landlord. Landlord reserves and shall at any and all reasonable times after three (3) days advance written notice have the right to enter the Property during normal business hours to (a) inspect the same, (b) post notices of non-responsibility and "for lease" signs, and (c) take any action Tenant is otherwise permitted to take under this Lease.

Section 11.12 Recording. The parties shall record this Lease or a short form memorandum thereof in the Official Records of Santa Clara County. Tenant agrees to execute, acknowledge and deliver to the Landlord a quitclaim deed at the end of the Term, upon the written request of Landlord.

Section 11.13 Entire Agreement. This Lease and the ARDDOPA set forth all covenants, promises, agreements, conditions and understandings between the Landlord and Tenant concerning the Property and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are set forth in the ARDDOPA and in this Lease. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or Tenant unless reduced to writing and signed by Landlord and Tenant.

Section 11.14 Waiver. Landlord's waiver of any term, covenant, condition shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition. The acceptance of rent by Landlord shall not be deemed to be waiver of any prior breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such prior breach at the time it accepts such rent. Landlord's failure to exercise any right, option or privilege hereunder shall not be deemed a waiver of such right, option or privilege nor shall it relieve Tenant from its obligation to perform each day and every covenant and condition on Tenant's part to be performed nor from damages or other remedy for failure to perform the obligations of this Lease.

Section 11.15 Attorneys Fees. If either party commences an action or proceeding to determine or enforce its rights under this Lease, the prevailing party shall be entitled to recover from the losing party all expenses reasonably incurred, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

Section 11.16 Indemnification. To the fullest extent permitted by law, Tenant shall at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend and hold harmless Landlord and the City from and against all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action, charges, assessments, fines and penalties of any kind, from any cause arising out of or relating to use, maintenance or alteration of the Property under this Lease, or by Tenant, its employees, agents, contractors, invitees or licensees which is not authorized under this Lease, or as a result of the tenancy created under this Lease including without limitation: (a) the occupancy of the Property by Tenant, (b) any act, error, omission, or negligence of Tenant in, on, or about the Property, (c) Tenant's conducting of its business; (d) the construction of the Improvements or any alterations or other activities or work done, permitted, or omitted by Tenant in at or about the Property; (e) any breach or default in

performance of any obligation on Tenant's part to be performed under this Lease; and (f) Tenant's performance under this Lease and the ARDDOPA.

Section 11.17 Conflict. In the event of any conflict between the terms and conditions of this Lease and the terms and conditions of the ARDDOPA, the terms and conditions of this Lease shall prevail.

Section 11.18 Non-Discrimination. The Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions:

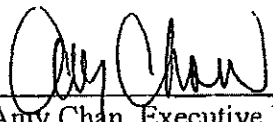
That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex marital status, national origin, ancestry, gender, disability, or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

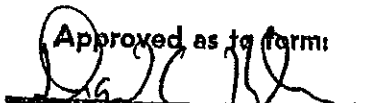
**"LANDLORD"**

SUNNYVALE REDEVELOPMENT  
AGENCY  
A Public Body Corporate and Politic

By:

  
Amy Chan, Executive Director

Approved as to form:


  
CITY ATTORNEY

**"TENANT"**

DOWNTOWN SUNNYVALE MIXED USE, LLC  
A Delaware limited liability company

By: RREEF America REIT III Corp. MM  
a Maryland corporation, its manager

By:

  
David M. Wilbur, Vice President

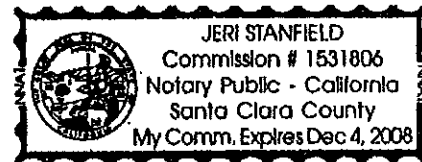
ACKNOWLEDGMENTS

STATE OF CALIFORNIA       )  
  )  
COUNTY OF SANTA CLARA    )

On September 28, 2007, before me, Jeri Stanfield, Notary Public, personally appeared AMY CHAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



STATE OF CALIFORNIA       )  
  )  
COUNTY OF Santa Clara

On September 28, 2007 before me, Jeri Stanfield, Notary Public, personally appeared DAVID M. WILBUR, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

All Agency property under parking structures,  
with exception of Penney's parking structure parcel



September 26, 2007  
BKF No. 20046002-32

Legal Descriptions  
of  
"Parking Parcels"  
Tract No. 9925  
(Sunnyvale Town Center)

Lot 3, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 3, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 414 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 4, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 4, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 414 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 1 Block 6, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 6, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 418 of Maps at Pages 46 through 55 inclusive, Records of Santa Clara County.

This description was prepared by me or under my direction.

For: BKF Engineers

*M B Parissenti*

Martin B. Parissenti, P.E., No. 630747

License expires 3-30-2008

9/26-07

Dated

